

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Portion of the)	ORDER OF FINAL
Platte River Basin Upstream of)	DETERMINATION OF RIVER BASINS,
the Loup River Confluence,)	SUBBASINS, OR REACHES AS
the North Platte River Basin, and)	FULLY APPROPRIATED, AND DESCRIBING
the South Platte River Basin within)	HYDROLOGICALLY CONNECTED
the South Platte Natural Resources)	GEOGRAPHIC AREA
District, the Twin Platte Natural)	
Resources District and the Central)	
Platte Natural Resources District)	

This matter came on for consideration before the Director of the Department of Natural Resources (the "Department") pursuant to Section 54, subsection (5) of LB 962 (2004 Nebraska Legislature), codified at Neb. Rev. Stat. Section 46-714(5). That section requires the Department to: (1) notify the appropriate natural resources districts, within thirty days after the final hearing required by Section 46-714(4), of the Department's final determination as to whether a river basin, subbasin, or reach is fully appropriated; and (2) if the final determination is that the river basin, subbasin, or reach is fully appropriated, at the same time (a) decide whether to continue or to terminate the stays on new surface water uses and on increases in the number of surface water irrigated acres and (b) designate the geographic area within which the Department considers surface water and ground water to be hydrologically connected to the river basin, subbasin, or reach, and describe the methods and criteria used in making that determination.

The Director FINDS:

1. Prior to July 16, 2004, the Director of the Department made preliminary determinations, pursuant to subsection (2) of Neb. Rev. Stat. Section 46-656.28, as it existed prior to that date, that there was reason to believe that the use of hydrologically connected ground water and surface water in the South Platte Natural Resources District, the Twin Platte Natural Resources District, and the Central Platte Natural Resources District, was contributing to or was in the reasonably foreseeable future likely to contribute to a conflict, dispute, or difficulty listed in such subsection. Each preliminary determination related to the entirety of the specific natural resources district. The preliminary determination was in response to the written request of each of these natural resources districts that the Department consult with and conduct studies on the natural resources district, and hold a hearing on the preparation of a joint action plan. Prior to July 16, 2004, the Director did not make a determination that a joint action plan should not be prepared, and the preparation of a joint action plan was not completed for any of the subject natural resources districts.

2. On July 16, 2004, the South Platte Natural Resources District, the Twin Platte Natural Resources District, and the Central Platte Natural Resources District became subject to the provisions of subsection (3) of Section 60 of LB 962, codified at Neb. Rev. Stat. Section 46-720, and also Sections 53 to 59 of LB 962, codified at Neb. Rev. Stat. Sections 46-713 to 46-719.
3. Pursuant to Neb. Rev. Stat. Section 46-713, the Department duly provided notices to the public of its preliminary determinations that the South Platte Natural Resources District, the Twin Platte Natural Resources District, and the Central Platte Natural Resources District were each fully appropriated in their entirety.
4. The Department and each of the referenced natural resources districts sent letters as follows:
 - a. Letter dated August 11, 2004 from the Department and the South Platte Natural Resources District;
 - b. Letter dated August 11, 2004 from the Department and the Twin Platte Natural Resources District;
 - c. Letter dated August 11, 2004 from the Department and the Central Platte Natural Resources District.

The appropriate letter which was sent to each irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach, and to other water users and stakeholders deemed appropriate by the Department or the affected natural resources district. Each letter offered the recipient the opportunity to consult with the Department and the appropriate natural resources district on the question as to whether the Department should make a final determination that the portion of the Platte, North Platte or South Platte Basin within that district is fully appropriated. The Department received, and duly considered, letters in response to the request for consultation.

5. The Department issued notice of, and held, two public information meetings in each natural resources district, as follows:
 - a. South Platte Natural Resources District public information meetings were held on August 25, 2004, and September 1, 2004.
 - b. Twin Platte Natural Resources District public information meetings were held on August 26, 2004, and August 31, 2004.

- c. Central Platte Natural Resources District public information meetings were held on August 27, 2004, and September 9, 2004.
- 6. Pursuant to statute, the Department issued notice of, and held, public hearings in each natural resources district, as follows:
 - a. South Platte Natural Resources District public hearing was held on September 1, 2004.
 - b. Twin Platte Natural Resources District public hearing was held on August 31, 2004.
 - c. Central Platte Natural Resources District public hearing was on September 9, 2004.
- 7. Public testimony was taken at each public hearing, and the record in each public hearing was held open for at least one full week following the date of the public hearing, in order to allow the receipt of any additional written testimony into the record.
- 8. A transcript was made for each public hearing, and the Department duly considered the testimony and evidence produced at the hearings.
- 9. In 1997, the States of Nebraska, Wyoming, and Colorado and the U.S. Department of the Interior signed the Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska (the "Cooperative Agreement"). Pursuant to the Cooperative Agreement, Nebraska has prepared the Nebraska New Depletion Plan (the "New Depletion Plan"), a purpose of which is to describe the actions Nebraska proposes to take to prevent or mitigate for new depletions to the extent those new depletions are caused by new and expanded uses of water begun since the date of July 1, 1997.
- 10.
 - a. On February 27, 1979, by a memorandum to staff, the Director of the Department of Water Resources (now the Department of Natural Resources) ordered staff to deny all applications for natural flow for consumptive purposes in the Lodgepole Creek basin.
 - b. On December 13, 1979, the Director of the Department of Water Resources issued another memorandum to staff directing them to deny all applications for the direct use of natural flow from Pumpkinseed Creek and tributaries for irrigation purposes.
 - c. Through actions taken since approximately 1993, the Department of Natural Resources has effectively maintained other informal moratoriums through its discussions with possible applicants and through its orders regarding applications filed in the North

Platte River and its tributaries, the South Platte River and its tributaries, and the Platte River and its tributaries above the mouth of the Loup River.

- d. On July 14, 2004, the Department issued an Order Declaring Formal Moratorium on the issuance of new surface water appropriations in the Platte River Basin above the mouth of the Loup River, the North Platte River Basin, and the South Platte River Basin.
 - e. Numerous new wells have been registered with the Department since the Department stopped issuing surface water rights as described in this Section.
 - f. Departmental administration would have occurred frequently during the previous twenty years in the Platte River Basin upstream of the confluence with the Loup River, and in the North Platte River Basin and the South Platte River Basin if the surface water rights existing on July 16, 2004, had been in existence during the previous twenty years
11. a. South Platte Natural Resources District ordered a temporary suspension of well construction for all of the South Platte Natural Resources District, except for the Lodgepole Creek integrated management subarea, which temporary suspension took effect on January 14, 2004. The moratorium for the Lodgepole Creek integrated management subarea took effect on November 7, 2002.
- b. Twin Platte Natural Resources District ordered a temporary suspension of well construction in a portion of the natural resources district; that temporary suspension took effect July 1, 2004.
- c. Central Platte Natural Resources District ordered a temporary suspension of well construction in a portion of the natural resources district; that temporary suspension took effect November 20, 2003.
12. The method used to determine the hydrological connection for purposes of the final fully appropriated determination was to review and evaluate available and relevant data from the United States Geological Survey, the University of Nebraska Conservation and Survey Division, the data used in the development of the Cooperative Hydrology Study ("COHYST") Model, and other information that was included in the record of the public hearings referenced in finding Number 6 above.
13. In determining the hydrologically connected areas for purposes of the final fully appropriated determination, consideration was given to the following criteria:

- a. the boundaries of the area for which each of the natural resources districts initiated the joint action planning process under previous Section 46-656.28, which in the case of each of the natural resources districts was all areas within such natural resources district's boundaries; and
- b. the extent to which the methods used to determine hydrologic connectivity demonstrated that withdrawal of ground water from within the area would, at some future time, impact the surface water supply of the fully appropriated basin.

It is therefore CONCLUDED that it is in the public interest to (1) make a final determination that the portions of each of the Platte River Basin upstream of the Loup River confluence, the North Platte River Basin, and the South Platte River Basin within each of the South Platte Natural Resources District, the Twin Platte Natural Resources District and the Central Platte Natural Resources District are fully appropriated, (2) to continue the stays on new surface water uses and on increases in the number of surface water irrigated acres, and, (3) to designate the area within which surface water and ground water are hydrologically connected for purposes of the final determination of fully appropriated.

It is therefore ORDERED that:

1. The portions of each of the Platte River Basin upstream of the Loup River confluence, the North Platte River Basin and the South Platte River Basin that are within each of the South Platte Natural Resources District, the Twin Platte Natural Resources District and the Central Platte Natural Resources District are hereby determined to be fully appropriated, final determination.
2. The stays on new surface water uses and on increases in the number of surface water irrigated acres, that were effective as a result of the provisions of Section 46-720 and the Department's July 16, 2004, preliminary determination that the affected natural resources districts were fully appropriated, are continued as a result of this determination, and shall remain in effect until (a) they are terminated pursuant to law, (b) an integrated management plan for the affected area has been adopted and has taken effect, (c) the Department has completed a reevaluation of the area and has determined that the affected area is not fully appropriated, or (d) the stays expire pursuant to law. To the extent the geographic area subject to such stays is now within the land area designated as the overappropriated basin on September 15, 2004, or within the land area considered to be hydrologically connected for purposes of the overappropriated designation, such stays shall continue in effect as stays for that overappropriated basin and area considered to be hydrologically connected for purposes of the overappropriated designation.

3. The geographic area within which the Department has determined ground water to be hydrologically connected to the surface water for the purposes of the final fully appropriated determination includes the entire geographic area of the South Platte Natural Resources District, the Twin Platte Natural Resources District, and the Central Platte Natural Resources District. Because none of the geographic area subject to the Department's preliminary determination of fully appropriated is excluded from the area for which this final determination is made, the stays on the construction of new water wells and on increases in acres irrigated with ground water will remain in effect unless terminated by the applicable district pursuant to subsection (7) and (8) of Section 46-714.
4. Interested persons may petition the Department for a rehearing to reconsider the final determination that the portions of the Platte River Basin upstream of the Loup River confluence, the North Platte River Basin and the South Platte River Basin within the South Platte Natural Resources District, the Twin Platte Natural Resources District and the Central Platte Natural Resources District are fully appropriated, the determination of the geographic area within which the Department has determined that surface water and ground water are hydrologically connected for purposes of the final determination of fully appropriated, or the criteria used to make the determination of hydrologic connectivity for purposes of the final determination of fully appropriated. Such petition for a rehearing must be filed within fifteen days of this order and must clearly state the basis for such request. For sufficient cause shown, the Director may re-examine the action imposed by this Order at any time.

DEPARTMENT OF NATURAL RESOURCES

September 30, 2004



Roger K. Patterson, Director